SUPREME COURT, U.S.
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No. 351

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

WILLIAM J. POWERS, JR.

v.

PAUL SLATON

PETITIONER'S REPLY BRIEF AND SUPPLEMENTARY APPENDIX

UNITED STATES LAW PRINTING CO., CHICAGO 37, ILL. LAFAYETTE 3-4343

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No. 351

WILLIAM J. POWERS, JR.,

Petitioner,

vs.

PAUL SLATON,

Respondent.

PETITIONER'S REPLY BRIEF AND SUPPLEMENTARY APPENDIX

Petitioner has been quite interested to discover that a second petition for a writ of certiorari was filed in this Court on September 5, 1963 in Docket No. 441, entitled *Roney v. Board of Election Supervisors of Cecil County, Maryland* in which two doctors who reside on the Perry Point Veterans Administration Hospital seek to review the decision of the Court of Appeals of Maryland reported at 231 Md. 561; 191 Atlantic 2nd 446 and in which that

Court held on June 7, 1963 that the doctors were not residents of Maryland because the Perry Point Veterans Hospital was under the exclusive jurisdiction of the United States and they had no residence within the State of Maryland.

REPLY TO PART ONE

A. ON PAGES 4 AND 5 OF RESPONDENT'S RESPONSE TO THE PETITION FOR WRIT OF CERTIORARI THE COUNSEL FOR RESPONDENT AGREED WITH PETITIONER THAT THE DISTRICT COURT AND THE COURT OF APPEALS FOR THE SIXTH CIRCUIT DID NOT DECIDE ANY FEDERAL QUESTIONS.--

Basically, that is why the petitioner is here now before this Court, for review of the failure of the Courts below to decide questions which they should not have passed by.

Counsel for respondent advanced the argument that the complaint in the District Court was so vague and imaginary that respondent could not answer it.

It was the respondent, however, who introduced Exhibits "A"; "B"; "C"; which were respectively the record of the Circuit Court of Fayette County of May 17, 1947 and June 9, 1947; the order of the County Court of Fayette County on July 26, 1947 for the first appointment of a committee; and the petition and order of the County Court of Fayette County on August 24, 1949 for the second appointment of a committee. These records which also included the alleged affidavits of the physicians were attached to respondent's motion to dismiss.

It is quite clear that respondent understood enough to answer the complaint.

It is also quite clear that the complaint was sufficient enough under the doctrine set out by this Court in *Conley v. Gibson*, 355 U.S. 41, pages 45-6 and 48; 78 Sup. Ct. 99; 2 Law Ed. 2nd 80.

It must be remembered also that federal procedure does not require a plaintiff to plead elaborate detail of facts which are peculiarly within the knowledge of a defendant.

B. THE RESPONDENT HAS A COMMON LAW DUTY AS WELL AS A STATUTORY DUTY NOT TO INTERFERE WITH THE PERSON OR PROPERTY OF ANOTHER WITHOUT LAWFUL AUTHORITY.

The responsibility of the respondent is the same as every one else in his common law obligation to refrain from interfering with either the person or property of another person and he does so only at his own peril.

The respondent has an additional set of duties which are set out here in the Supplementary Appendix as Exhibits M through and including "Q".

The respondent has the special duty of a trust officer of a bank to know that he cannot take the personal property of another without lawful authority whether he does so in his own name or as the agent of another.

These statutes imposed a duty of knowledge on the respondent on August 24, 1949 which he completely failed to recognize.

The Court of Appeals of Kentucky said in *Super v. Foster*, 244 Ky. 658, at page 662, that (51 S.W. 2nd 927):

> "A 'void judgment' is in legal effect no judgment; no rights are divested; and no rights are obtained or barred. *Carpenter v. Moorebock*, 151 Ky. 506, 152 S.W. 575; *Adams Express Co. v. Bradley*, 179 Ky. 238, 200 S.W. 340."

The Court of Appeals of Kentucky also said, in *Small* v. *Bailey*, 356 S.W. 2nd 756-757, that:

> "The Court was in error in this conclusion because the law is well settled that an agent of a corporation is personally liable for a tort committed by him though he was acting for the corporation. *Pirtle's Adm'x.* v. *Hargis Bank & Trust Company*, 241 Ky. 455, 44 S.W. 2d 541.

REPLY TO PART TWO.

The insistence of counsel that the Uniform Veterans Guardianship Act of Kentucky is a cure all for the problems of the respondent overlooks the fact that Chapter 388, *supra*, does not displace the laws regulating lunacy inquests but merely makes some changes in the methods of appointing guardians or committee and assumes that the necessity has already been found.

The argument that two doctors waived exclusive federal jurisdiction and receded federal territory to Kentucky by merely writing a letter of information to the Court Clerk is so ridiculous that it does not justify answer except to point out the difficulties the Government will have in knowing from day to day what property it owns and controls if that argument is accepted by this Court.

The argument is historically inaccurate in that the State cession statute was originally passed in 1892 and was in effect when the land for the Hospital was purchased although it is true that the statute was amended in 1954 as respondent says.

REPLY TO PART THREE.

The service of process in this case would not have been valid in any event because the cause of action did not arise within the jurisdiction of Kentucky.

The service has been impeached, however, on April 12, 1963 during taking of depositions by William A. Wallace, counsel for respondent and also counsel for the Citizens Union National Bank and Trust Company, in a second law suit where Mr. Hauser who signed the return of service admitted on cross examination under oath that he had never known any of the persons he had served at the Veterans Hospital except one personal friend (not the petitioner) and that he had always relied on a hospital attendant to identify the persons served and that he could not swear to their identity of his own knowledge.

CONCLUSION

The petitioner respectfully prays that the orders and judgments of the United States Court of Appeals for the Sixth Circuit and the United States District Court for the Eastern District of Kentucky be reversed; that the thirty-five day commitment order of May 17, 1947 be declared void; that the lunacy inquest of June 9, 1947 be declared void; that the first appointment of a Committee on July 26, 1947 by the County Court of Fayette County be declared void; and that the Second appointment of a committee on August 24, 1949 by the County Court of Fayette County, Kentucky be declared void.

Respectfully submitted,

WILLIAM J. POWERS,
Petitioner Pro Se

APPENDIX "M"

VETERANS ADMINISTRATION
HOSPITAL
Lexington, Kentucky
July 7, 1949

Your File Reference:
In Reply Refer to 14HP10MA
C-10,894,687
Powers, William J.

Mr. George E. DeLong
Clerk, Fayette Circuit Court
Lexington, Kentucky

Dear Mr. DeLong:

Mr. William J. Powers, Jr., was committed to this hospital by your court May 17, 1947. He was granted a ninety-day trial visit January 21, 1949. The trial visit was extended and the veteran has now completed a period of six months on this status.

Mr. Powers has apparently made a satisfactory adjustment and is being discharged from trial visit status, effective July 20, 1949.

Very truly yours,

Carr S. Greenhow
Carr S. Greenhow
Assistant Registrar.

APPENDIX "N"

Kentucky Revised Statutes
1948 Edition
Chapter 387

387.025 Application for appointment of guardian or committee; what to contain; notice. Before being appointed as guardian or committee, every person shall make and file in duplicate a written application under oath, which must state the name, age and residence of the ward, the ward's husband or wife and each of the ward's parents, or if there be no spouse or parents living in the state, the names, ages and residence of the next of kin, the name of the person having custody of the ward, a brief description of the ward's estate and its probable value, and the estimated annual income therefrom. A duplicate copy of said application shall be mailed by the clerk to the Commissioner of Revenue of the State of Kentucky. The court shall thereupon appoint a time for hearing such application. Notice thereof shall be given to the minor if more than fourteen years of age; to the person having custody of the ward; to the husband or wife and each parent of the ward, or if none, to the next of kin residing in the state in the manner provided in KRS 395.016. (1942, c. 107, § 5)

Administrator of Veterans' Affairs is necessary party when beneficiary of Veterans' Administration is involved. KRS 388.200

Form of petition for appointment of guardian or committee for beneficiary of Veterans' Administration. KRS 388.230

APPENDIX "O"

Kentucky Revised Statutes
1948 Edition
Chapter 387

387.210 [2149; 2152] Jurisdiction of county courts over persons of unsound mind and their committees; bond of committee. (1) The county courts shall have exclusive jurisdiction of the appointment and accounting of committees. Application shall be filed and notice given in the same manner required for guardians. There shall be filed with said application a statement from the clerk of the circuit court that the incompetent has been adjudged as such. Appointment shall be made, bond executed, and accounting required in the same manner as guardians and actions upon such bond may be maintained by any person aggrieved by a breach thereof. (1942, c. 161, § 9)

(2) An appeal may be taken to the circuit court from the judgment of a county court appointing or removing, or failing to appoint or remove, a committee by any person interested in the person or estate of the person of unsound mind, who shall execute a bond for costs as in other appeal cases.

APPENDIX "P"

Kentucky Revised Statutes
1948 Edition
Chapter 387

387.230 [2153; 4711-a] **Powers and duties of committee; personal charge may be given to another person; compensation.** (1) The power and duty of the committee of a person of unsound mind shall, in all respects, be the same as those of the guardian of a minor; except as to education.

(2) The court may appoint a person other than the committee to take charge of the person of unsound mind when he is not confined in an asylum, and may order his committee to make necessary provision for his support.

(3) Committees of persons of unsound mind shall receive the same compensation for their services, as is provided in KRS 386.180 for trustees of estates.

APPENDIX "Q"

Kentucky Revised Statutes
1948 Edition
Chapter 388

388.230 Petition for appointment of guardian or committee; who to be appointed. (1) A petition for the appointment of a guardian or committee for any minor or mentally incompetent beneficiary of the Veterans Administration may be filed in the court having jurisdiction by or on behalf of any person who under existing law is entitled to priority of appointment. If there be no person so entitled or if the

person so entitled shall neglect or refuse to file such a petition within thirty days after mailing of notice by the Veterans Administration to the last known address of such person indicating the necessity for the same, a petition for such appointment may be filed by or on behalf of any responsible person residing in this state.

(2) The petition for appointment shall set forth the name, age, place of residence of such beneficiary, the name and place of residence of the nearest relative, if known, and the fact that such beneficiary is entitled to receive benefits payable by or through the Veterans Administration and shall set forth the amount of moneys then due and the amount of probable future payments.

(3) The petition shall also set forth the name and address of the person or institution, if any, having actual custody of such beneficiary, and the name, age, relationship, if any, occupation and address of the person proposed for appointment as guardian or committee. Notwithstanding any provision of existing law as to priority, the court may appoint a capable individual, bank or trust company as guardian or committee, if the person entitled to priority fails to apply, or, if after hearing the court determines it is for the best interest of such beneficiary to appoint another.

(4) In the case of a mentally incompetent beneficiary, the petition shall show that such beneficiary has been rated incompetent by the Veterans Administration on examination in accordance with the laws and regulations governing the Veterans' Administration. (1942, c. 25, s. 4).